

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0318

Gross and Adjusted Gross Income Tax
Calendar Years 1988, 1989, 1990, 1991, 1994, and 1995

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is incorporated and has one Indiana business location. Taxpayer manufactures and sells products. Upon audit it was discovered that the taxpayer failed to report Federal audit changes for 1990 and 1991. The 1990 change in Indiana from a net operating loss of \$431,650 to an income of \$100,656 resulted in the disallowance of prior Indiana net operating loss carryback to 1988 and 1989.

Taxpayer's audit revealed that it failed to report nearly ninety percent (90%) of its gross income in 1995.

Upon taxpayer's protest dated May 25, 1999, the file was returned to the auditor for resolution. All issues with the exception of the penalty have been resolved at the audit level and are verified by taxpayer's letter dated February 25, 2000. To address the penalty, reference is made to taxpayer's letter dated May 25, 1999 that includes a "Reasonable Cause" statement for calendar years 1988, 1989, and 1990. The taxpayer states that at the time the Indiana audit was completed, it had petitioned the US Tax Court for redetermination of the Statutory Notice of Deficiency issued by the IRS for the Federal tax years 8/8/90 to 12/31/90 and 1/1/91 to 12/31/91; and the statute of limitations on these years were still open and suspended while the tax court was reviewing the case. A settlement of all open issues was not reached and finalized until March 1999.

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DISCUSSION

Taxpayer was assessed a negligence penalty for failure to report RAR adjustments for 1991, 1992, and 1993 as required by 45 IAC 3.1-1-94 and IC 6-3-4-6, and from failure to include all Indiana income in Gross Income for Fiscal Years 01/01/95, 12/31/95, and 05/13/96, the issue which was in the prior audit dated May 6, 1996.

Taxpayer, in a letter dated March 16, 2000 protested penalties assessed because there was no negligence or intentional disregard of Indiana tax regulations. Taxpayer further states the assessments relate from the application of RAR adjustments and the timing of NOL's in connection with amending returns.

Taxpayer, however, failed to report RAR adjustments as required under 45 IAC 3.1-1-94 and IC 6-3-4-6 for 1991, 1992, and 1993.

Under 45 IAC 3.1-1-94, "all taxpayers are required to file a notice with the Department within 120 days after a modification of a federal income tax liability explaining the modification". The notifications were issued the taxpayer in 1995. The 120 days does not mean "120 days after the issuance of a final assessment" but "after a modification of a federal income tax liability". The Department finds that the penalties are appropriate as no basis for reasonable cause exists under IC 6-8.1-10-2.1. Taxpayer did not notify the Department of proposed RAR Adjustments and failed to report all of its gross income.

FINDING

Taxpayer's protest is denied.